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ABSTRACT

In 1998, the Justice Policy Institute published "School House Hype: School Shootings and the Real Risks Kids Face," a report that examined the issue of school safety, and concluded that schools are the safest places for children to be. This report, inspired in part by recent school shootings, attempts to place the question of school violence and its accompanying reactions in a larger statistical and legal context. Data from several government agencies were analyzed to compare the real risks children face in school to the distorted image reported by the media. A survey of recent policy changes at the state and national levels shows the new security measures being taken in light of the shootings at Columbine High School. The study also analyzes recent case law concerning school violence, concluding that there is no discernible trend by either federal or state courts to impose liability on school districts where children are injured or killed at the hands of other students and third parties. The findings actually suggest that administrators may risk liability if they act too impulsively to exclude youth from school without proper due process protection. The report also considers the efficacy and impact of excluding large numbers of mainly minority and disabled children from schools. National data is reported where possible, with a more in-depth look at states like Maryland and Massachusetts and school district data indicative of national policy trends. Recommendations highlight the practices researchers say will work to reduce school violence. (Contains 3 figures and 111 endnotes.) (SLD)

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School House Hype:
Two Years Later

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School House Hype: Two Years Later

"Congress finds that juveniles between the ages of 10 years and 14 years are committing increasing number of murders and other serious crimes...the tragedy in Jonesboro, Arkansas, is, unfortunately, an all too common occurrence in the United States."

> The Violent and Repeat Juvenile Offender Accountability and Rehabilitation Act of 1999, S.254, passed in the Senate in May, 1999

"There are many misconceptions about the prevalence of youth violence in our society and it is important to peel back the veneer of hot-tempered discourse that often surrounds the issue.... While it is important to carefully review the circumstances surrounding these horrifying incidents so that we may learn from them, we must also be cautious about inappropriately creating a cloud of fear over every student in every classroom across the country. In the case of youth violence, it is important to note that, statistically speaking, schools are among the safest places for children to be."

> Final Report, Bi-Partisan Working Group on Youth Violence. 106th Congress, February, 2000

I. Introduction

In July, 1998, the Justice Policy Institute (JPI) sought to inject some context into the debate around school violence inspired by the tragic shootings that occurred in Jonesboro, Arkansas, and a number of other communities. In *School House Hype: School Shootings and the Real Risks Kids Face in America*, JPI compared the notion that children faced growing risks of violent death by gunfire with the statistical reality of school shootings. The findings that children have a one in a million chance of being killed in their schools, and that those odds have not changed in recent years, have since been echoed in a number of studies. It was encouraging news that President Clinton reminded Americans in his first major policy speech on school safety in August, 1998 that our schools were the safest places for children to be.[1]

Unlike some elected officials, the President resisted the temptation to demonize children or pander to the public's fears with new laws. The administration instead proposed thoughtful changes in the name of safety that may enhance the school experience for all children. As more data became available that contextualized the true risks of school violence, it was hoped that the news of the declining juvenile crime rate would take hold in the public mindset.

"This year, recently, a new report showed that the overwhelming majority of our schools are, in fact, safe."
-President Clinton,
August 27, 1999

But, once again, the public consciousness was transformed by the tragic killing of children by other children in a school. The President's calming words and the data could not divert the nation's attention from the riveting image of children breaking through windows to escape the carnage last April in Littleton, Colorado. The nation responded to the killing of 12 children and one teacher at Columbine High School with a mixture of empathy for the community, grief for the victims, and ***a desperate fear for the safety of their children.***

Beyond Belief?: Are Schools Safe?

Despite the fact that there was a 40% decline in school-associated violent deaths between school years 1997-8 and 1998-9 (from 43 to 26), the number of Americans who were fearful of their schools rose nearly 50% during that same period. Even after two new well-publicized studies reported school crime to be on the decline, seven months after Columbine, more than 60% of Americans said school safety "worried them a great deal." Parents and school boards continue to call for more metal detectors, locker searches and student identification badges, even as students say they feel less safe and report more crime in schools that use these "secure" school procedures. Since the Littleton shooting, when students and school administrators talk about the safety of their schools, they might as well be speaking about different worlds:

<u>Students reporting on school violence to a meeting of state attorney generals:</u>

"Too much security makes you wonder whether it is safe."[2]

"When I get up to go to school in the morning, I don't want to feel like I'm going to a correctional facility."[3]

Chair of a local school board:

"We've got to let the kids know who is in charge of the schools. And if that means infringing on somebody's individual freedom, so be it. There's been some criticism that, well, where does it end? And my point would be, I don't know where it ends, but it is sure going to begin with [mesh] book bags."[4]

Ironically, during a time when youth violence and violence in schools has been on the *decline*, parents are becoming more *afraid* for the safety of their children in schools. The relatively good news concerning the declining juvenile crime rate has been met by an expansion of security policies across the country. While the story of children being expelled for minor acts has been amply covered, the scale of what is occurring in America's schools in the name of safety dwarfs the unlikely possibility of another school shooting. In 1997, 3.1 million students were suspended from school, most for non-violent, non-criminal acts. Even though school shootings have been portrayed as a crisis in America's white suburban or rural communities, minority children and disabled students are bearing the brunt of these new exclusion policies. African American and Latino children are suspended from school at several times the rate of white students. Children face greater risks of dropping out permanently and becoming entangled in the courts when they are excluded from school.

"We've got to let the kids know who is in charge of the schools–where does it end? I don't know where it ends, but it is sure going to begin with (mesh) book bags"
-A chair of a local school board.

"When I get up to go to school in the morning, I don't want to feel like I'm going to a correctional facility."
-A student reporting on school violence.

The larger threat comes, not from school shootings, but from recent attempts to turn the schools into funnels for the juvenile justice system. Nearly every state has recently changed their laws to require that schools share information with the courts-watering down the confidentiality laws that were the hallmark of the juvenile court's rehabilitative model. Teachers and principals are referring students to police, settling trivial matters in the courts rather than in the classrooms. And if you can't find real evidence of a threat, you can always turn to the Federal Bureau of Investigation's new "profiling" software that pretends to know all the tell-tail signs for potential school shooters, including having parental troubles, disliking popular students, experiencing a failed romance, and listening to songs with violent lyrics.[5]

This year, as Americans soberly reflect on the needless loss of life that occurred at Columbine High, we need to take a closer look at what we are doing to our children in the name of school safety.

II. Methodology

71% of respondents thought it was "likely" that a school shooting could happen in their community.

60% of parents said that the fear their "children are no longer safe at their own school worried them a great deal."

This report will place the question of school violence and its accompanying reactions in a larger statistical and legal context. The authors have analyzed the latest data on school crime from the National Center for Education Statistics, the National School Safety Center, the Bureau of Justice Statistics, and the latest juvenile arrest data from the FBI and the Office of Juvenile Justice and Delinquency Prevention. The report compares the real risks kids face in schools to the distorted image echoed in opinion polls and reported by the media. A survey of recent policy changes at the state and national level provides a glimpse into how widely new school security measures are being enacted in the shadow of Littleton. The study then provides an analysis of recent case law concerning school violence, concluding that there is no discernible trend by either federal or state courts to impose liability on school districts where children are injured or killed at the hands of third parties. To the contrary, the findings suggest that administrators may well risk liability if they act too impulsively to exclude youth from school without proper due process protections. This is particularly true in the case of students experiencing educational disabilities.

Additionally, the report focuses on the efficacy and impact of excluding large numbers of mainly minority and disabled children from our schools. National data is reported wherever possible, but the report has also taken a more in-depth look at states like Maryland and Massachusetts and school district data that are indicative of larger national policy trends. The recommendations section will highlight the best practices that researchers say will work best to reduce school violence.

III. Public Fear vs. Reality: School Crime and Juvenile Arrest Data

In July, 1998, the Justice Policy Institute reported the latest data available on the context of juvenile crime, both in schools and in the larger community. The report noted the 1996 Centers for Disease Control findings that there is a less than one in a million chance of a school aged youth dying or committing suicide on school grounds or on the way to school.[6] Studies by the Bureau of Justice Statistics, the National Center for Education Statistics and various other sources found violent crime was relatively rare in schools and not on the increase. Many policymakers did note the rareness of these tragic events. In the introduction to *Early Warnings, A Timely Response*, a Presidential-directed report on the best practices that can be used to keep schools safe, Attorney General Janet Reno and Education Secretary Richard W. Riley note that "America's schools are among the safest places to be on a day-to-day basis."[7]

Public Perception vs. Reality: Data and Polling in Context

40%	The decrease in school associated violent deaths between school year 1997-1998 and 1998-1999
49%	The increase in poll respondents who fear a school shooting in their community, from 1998 to 1999
1 in 2 Million	The chance that a school-aged child would die in a school in 1998-1999
71%	The portion of poll respondents who thought a school shooting was"likely" to happen in their community
56%	The decline in juvenile homicide arrests between 1993 and 1998
62%	The portion of poll respondents who believe that juvenile crime is on the increase
4%	The portion of juvenile homicides that occur in rural areas
First	The rank of rural parents in fear for their children's safety in schools vs. urban and suburban parents

But somehow, or somewhere, between the convening of expert panels and the release of new data, the message that our schools are safe places for our children has been lost on the public. A phone poll by Hart and Teeter Research of 1,004 adults for the NBC Nightly News and *The Wall Street Journal* taken just after the shooting in Jonesboro, Arkansas, revealed that 71% of respondents thought it was very likely or likely that a school shooting could happen in their community.[8] A *USA Today* poll done the day after the Littleton, Colorado shooting found that 68% of Americans thought it was likely that a shooting could happen in their town or city, and that respondents were 49% more likely to be fearful of their schools than in the previous year.[9] A CBS News phone poll done two days after the Littleton, Colorado shooting found that 80% of Americans expected more school shootings, and the number of people listing crime as the most important problem increased four-fold (from 4% to 16%) in the week after the Littleton shooting.[10]

The passage of time did not ease parents' fears that their children's schools could become the next Columbine High School. In May, 1999, one month after the Littleton, Colorado shooting, a Gallup

poll found that 52% of parents feared for their children's safety at school. But even five months later, nearly half of parents (47%) still worried about their kids' safety in the classroom.[11] ***Even though urban schools are the most likely site of real school crime and violence–and 96% of all juvenile homicide arrests occur in cities and suburbs–rural parents were more likely to say they were afraid (54%) than urban (46%) or suburban (44%) parents.*** A *Washington Post* poll conducted in November, 1999, designed to discern future election issues, showed how parents' anxieties over school safety was rising.[12] The phone poll survey of 1,010 adults asked respondents what "worried them a great deal." The second most frequently given answer was that "children in America are no longer safe at their own schools" (60%). School safety was the number one worry of parents with school children.

Despite these perceptions, since July 1998, several studies have shown that the vast majority of schools are safe from a wide variety of risk factors, and that whatever school crime exists appears to be steady or on the decline.

Source: National School Safety Center

Significant Findings:

School Associated Violent Death 1998-1999s: A 40% Decline From The Previous Year.[13]

In 1998, the National School Safety Center (NSSC) reported that there were 43 school associated violent deaths in the nation, 22% fewer than when they first began cataloging the trend in the 1992-1993 school year. **During the 1998-1999 school year, the year including the Columbine shooting, the NSSC reported 26 deaths or a 40% decline from the previous year, and 26% below the average for the previous 6 years.**[14] *With 52 million students enrolled in America's public schools, this means that last year, there was a one in two million chance of being killed in a school.*

Fights And Gun Possession In Schools Are Down

In August 1999, the Centers for Disease Control (CDC) reported in the *Journal of the American Medical Association*[15] on changes in school violence from 1991 to 1997. Based on self-reporting by 16,000 students for CDC's *Youth Risk Behavior Survey*, the study sought to map the changes in reported risk factors from surveys done in 1991 and 1993. In the previous CDC surveys, the authors found a decline in the number of kids who carried a weapon, fought or were injured in a physical fight in school between 1991 and 1993, and reported that those numbers were overall quite small. In 1993, for example, only 4.4% of surveyed students said they were injured in fight. CDC's new study found that between 1993 and 1997, the percentage of students who reported a variety of risk factors had declined:

"Although recent events have focused national attention on school violence, violence among adolescents is a more generalized problem."
-Centers for Disease Control and Prevention

- Student reports of physical fights on and off school grounds decreased by 14% (from 42.5% to 36.6%)
- There was a 9% decline in students who reported being in a physical fight on school grounds (16.2% to 14.8%)
- Student reports of being injured in a physical fight on and off school grounds decreased by 20% (from 4.4% to 3.5%)
- Student self-reports of carrying a weapon in the previous 30 days decreased by 30% (26.1% to 18%)
- There was a 25% decline in students who reported carrying a gun to school in the previous 30 days (7.9% to 5.9%)

The CDC study also found no significant increase in the number of youth who reported feeling too unsafe to go to school, and no significant change in rates of youth reporting property being stolen or damaged. The CDC report concludes, "although recent events have focused national attention on school violence, violence among adolescents is a more generalized problem. School violence may be viewed as a reflection or extension of youth violence in the larger community."

Total Number Of School Crimes Decline 29%

A joint study conducted by the Bureau of Justice Statistics (BJS) and the National Center for Education Statistics (NCES)[16] in 1999 mapped out the change in student reports of victimization and their perception of crime over time. The most significant and up-to-date figures in the report paint a picture similar to that found in the CDC study. Based on the statistics gathered under the

National Crime Victimization Surveys, BJS/NCES found a decline in non-fatal crimes against students aged 12-18 occurring at school or going to or from school between 1993 and 1997:

- The total number of reported school crimes declined 29% (3,795,200 to 2,721,200)
- The total number of serious violent crimes declined 34% (306,700 to 201,800)
- The total number of violent crimes (including fighting) declined 27% (1,438,200 to 1,055,200)
- The total number of thefts declined 29% (2,357,000 to 1,666,000)

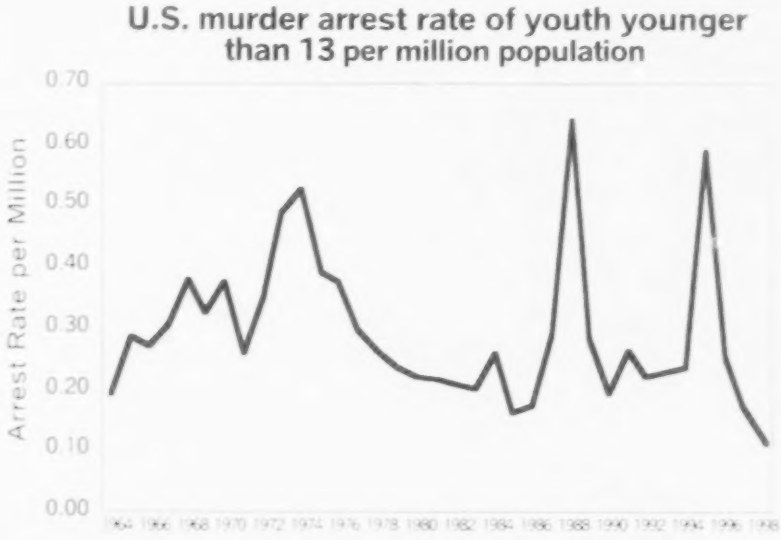
The NCES/BJS survey showed that 12-18 year old youth living in urban areas were more vulnerable to serious violent crime than were students in suburban and rural areas. The concern by parents and school officials that there is a school violence wave sweeping through rural or suburban America is not supported by the latest data.

Overall Decline In Juvenile Crime

Since its historical peak in 1993-4, the only discernible juvenile crime trend has been the continuing decline in the rate and numbers of youth arrested for serious offenses. Despite the call to toughen laws to prevent further school shootings and teen killings, the Federal Bureau of Investigation's latest count of juvenile arrests shows that there was a 56% decline in juvenile homicide arrests between 1993 and 1998.[17] ***The latest data show that juvenile arrests for homicide by youths under 13 are at their lowest rate since 1964, when the FBI first began keeping this statistic.*** The number of youths 12 and under arrested for homicide has dropped almost in half, from 41 in 1993 to 22 in 1998. During the same period, the number of youths under 18 arrested for rape declined by 29%, for robbery 47%, for aggravated assault 27% and the total juvenile crime rate has dropped 30%.

Source: FBI Uniform Crime Reports, 1993-1998

A 1999 report from the Office of Juvenile Justice and Delinquency Prevention (OJJDP), an office within the U.S. Justice Department devoted to juvenile justice issues, notes that school killings continue to be a much smaller threat than killings of kids in other locations.[18] They note authoritatively "school crime has not increased in recent years," and that in calendar year 1992-93 (which we know was one of the highest years for school associated violent deaths), **there were 115 times as many young people murdered away from school than in a school (7,294 vs. 63)**. OJJDP's juvenile crime reports find that 94% of all the counties in America experienced one or no juvenile homicide arrests in 1997. It is likely that even fewer counties had juvenile homicides in 1998, given the decline in juvenile homicides since then. According to OJJDP, eight cities that contain just 12½ percent of the U.S. population accounted for more than a quarter of juvenile homicide arrests.[19]



Source: Analysis of FBI Uniform Crime Reports by Mike Males, PhD

Security Focused Schools May Not Be Safer

A new study by researchers at the Department of Special Education at the University of Maryland suggests that the addition of metal detectors, locked doors, and other "secure building" procedures may not be the panacea they are made out to be.[20] Matthew J. Mayer and Peter E. Leone analyzed the data compiled for the 1995 National Crime Victimization Survey, and sorted the responses of 9,000 youth in school. The sample was sorted by those who attended schools with "secure buildings" (places which emphasized security measures like metal detectors, locked doors and personal searches), and those who attended schools with a rule enforcement policy (schools where the rules were emphasized, and the consequences of breaking the rules were known). The authors then sought to

measure the association between these two different approaches to school safety and the rates of victimization reported by students in those schools.

Mayer and Leone found that the more students knew the rules and consequences for misbehavior and were aware that the rules in a school were applied fairly under the "system of laws," the less victimization and disorder was present in the school. "Where disorder exists," wrote the authors, "students tend to engage in more acts of self-protection and live in a heightened state of fear."

In contrast, the greater the efforts taken to run a "secure building" through physical means (metal detectors) and personnel intervention (security guards, staff watching hallways), the more victimization and "disorder" (fights, thefts) reported, and the less safe kids reported feeling. "Creating an unwelcoming, almost jail-like, heavily scrutinized environment, may foster the violence and disorder school administrators hope to avoid," write Mayer and Leone. "Overall, the model may suggest that less attention should be paid to running schools in an overly restrictive manner and rather, schools should concentrate on communicating individual responsibility to students."

Students, Teachers And Police Don't Fear Schools

A *New York Times*/CBS phone poll of 1,038 of teenagers (aged 13-17) done in October, 1999 found that the percentage of youths who said they feared being victimized inside or outside a school had dropped from 40% to 24% since 1994.[21] The polls also found that 87% of youths surveyed thought their schools were safe. Though 52% of students surveyed thought an attack like the shooting at Columbine High School "could" happen in their school, students interviewed by *The New York Times* reported that most dismissed the threat as a minor concern. "There are people out there that are crazy, and anything is possible," Brandon Montgomery, a 17-year-old from Virginia told the *Times*. "I'm not saying it couldn't happen. It's just that if I'm afraid all the time, what is my life worth?"

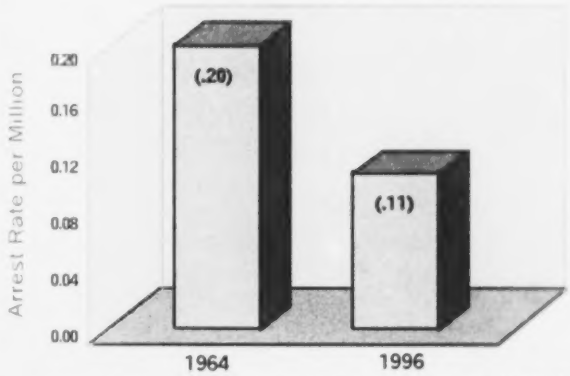
"Creating an unwelcoming, almost jail-like heavily scrutinized environment may foster the violence and disorder that school administrators hoped to avoid."
-University of Maryland Department of Special Education

Metropolitan Life Insurance sponsors a semiannual survey of student and teacher opinion, and provides one of the more comprehensive samplings on school safety.[22] The phone survey of 1,044 students, 1,000 public school teachers, and 100 law enforcement officials done in 1993 and 1998, provides a longitudinal look at the change in opinion. The Met Life survey found that teachers, students and law enforcement all felt that their schools were relatively free from non-fatal violence. The 1998 survey, which was done six months after the string of five highly publicized school shootings,

showed that twice as many teachers (11% to 21%), twice as many students (13% to 29%), and three times as many law enforcement officials (8% to 26%) reported that the level of violence in their schools had declined from the previous year. The 1998 survey showed that fewer police, students and teachers reported an increase in violence from the previous year. In all, 86% of teachers, 89% of students, and 89% of law enforcement surveyed said their local schools were safer, or about as safe as they were in the previous year. Law enforcement officials in 1998 were more likely than those in 1993 to report that students are rarely or never involved in acts of violence (38% to 22%). Contrary to the Hollywood stylized image of the embattled teacher (*Dangerous Minds*, or *The Substitute*), less than one percent of public school teachers, and 15% of students said they were worried or very worried about being physically attacked in and around their schools.

U.S. murder arrest rate of children younger than 13

1964/1996 comparison



Source: Analysis of FBI Uniform Crime Reports by Mike Males, PhD

There is clearly a gap between what we know about the statistical reality of youth and school violence, what students think of their schools, and what Americans think is or could be happening in their children's schools. Sadly, many of the policy changes being enacted across the country are based on policymakers' sense of those adult perceptions, and not the actual incidence of crime, or the experiences of children in school.

IV. *Fear of Liability*

> *"Our schools have become killing fields. Our children are no longer safe because other children prey upon them. Murder has become the preferred method of settling the schoolyard dispute. The epidemic of school violence has reached into the very heart of America. It is no longer the story of the big city or the ghetto. The infection of violence has found its way into our small towns and rural communities. It is everywhere in our country."*
>
> Civil Complaint, James v. Carneal, Civil Action 98-CI-1154, Filed December 2, 1998 in Paducah, Kentucky.

School officials may well be bringing in new school safety policies based on their perception that they will be held liable for actions they may take, or fail to take, concerning student discipline.

Sensationalized lawsuits such as those filed in Littleton, Colorado and Paducah, Kentucky have, in all likelihood, added to the fears of school officials. In McCracken Circuit Court, after Michael Carneal's shooting of 3 students in Paducah, Kentucky, plaintiffs filed suit against more than 30 school officials, as well as Carneal's parents.[23] Likewise, attorneys in Colorado filed a $2.5 million dollar wrongful death suit against the parents of Dylan Klebold and Eric Harris. Yet in spite of these well publicized cases, neither federal nor state courts have shown any significant change in their rulings in recent years concerning legal liability against public school officials in cases where students have been injured by other students or third parties. Federal courts have yet to impose liability under federal civil rights laws against a school system based on a claim of failure to protect. State courts have, for the most part, also continued to recognize sovereign immunity principles absent egregious circumstances. ***In other words, citizens generally cannot sue the government for damages unless the government enacts a statute or regulation allowing itself to be sued.***

Students are, however, bringing suits against school officials challenging procedural and substantive due process rights as a result of disciplinary actions taken by schools. Further, in instances involving students experiencing educational disabilities, failure on the part of a school district to adhere to federal disability laws may prove costly for a district too eager to impose discipline without proper consideration of the child's disabilities.

Federal Courts Have Not Generally Allowed for Damages in School Cases

Federal courts have consistently declined to find liability pursuant to Section 1983 civil rights statutes against school systems and school officials when children are injured at the hands of third parties. Section 1983 was enacted to allow persons who suffer violations of their civil rights due to actions of the government to recover damages. In spite of compulsory attendance laws, federal courts have routinely held that schools do not have a "custodial" relationship over students that would give rise to Fourteenth Amendment Due Process rights arising from a duty to protect.[24] In order to establish such a right, either a "special relationship" must exist, or there must be "state created danger" sufficient to establish liability.[25]

Citizens generally cannot sue the government for damages unless the government enacts a statute or regulation allowing itself to be sued.

In a series of federal cases, many of which have involved fatal school shooting incidents, the federal courts have consistently rejected the claim that public schools have a "special relationship" sufficient to establish civil rights liability.[26]

As one court noted,

> *"[We] must reject the broad view of 'custody' based on state compulsory attendance law...[because] school officials would be subject to Section 1983 liability any time a child skinned his knee on the playground or was beat-up by the school bully, so long as the requisite 'state of mind' was shown. More seriously,...teachers would be constitutionally obligated to assumed roles as policemen or even prison guards in protecting students from other students." Dorothy J. v. Little Rock School District, 794 F. Supp. 1405 (E.D.Ark. 1992).*[27]

State Courts Have Generally Not Imposed Liability

Students have also attempted to recover damages for injuries in state court cases, generally alleging negligence on the basis of failure to protect or failure to provide adequate supervision by school officials.[28] While some courts have recognized that this theory of liability exists, most have been reticent to impose liability.

The doctrine of sovereign immunity protects many state officials from liability absent circumstances that would have put a reasonable person on notice to protect against the injury causing act.[29] Courts have typically rejected a finding of liability in cases where injuries were unforeseeable, such as acts which are impulsive or unanticipated,[30] or where the school employee's conduct was not the proximate cause of the injury to the student.[31] Sovereign immunity has also consistently been applied in cases where school officials were exercising discretionary functions, including disciplinary actions and supervision of students.[32] Yet in other states, the doctrine of sovereign immunity has been applied unless a finding is made that the school personnel acted with malicious, willful or wanton conduct.[33]

Students Are Posing Legal Challenges To School Disciplinary Actions

Federal courts have generally dismissed claims by students alleging due process violations as a result of disciplinary actions by schools.[34] However, some state courts have recognized procedural irregularities that warrant setting aside a school's decision regarding suspension or expulsion.[35]

"We must reject the broad view of 'custody' based on state compulsory attendance law... because school officials would be subject to liability any time a child skinned his knee on the playground."
-Federal Court Ruling

An appellate court in Pennsylvania recently held that a school's policy of "zero tolerance" exceeded the authority of the school board in that it denied the superintendent, the school board and the students the exercise of discretion specifically provided by the school code, as well as by legislative intent.[36] In that case, a seventh grade "A" student and choir member was

expelled after he found a miniature Swiss army knife in the school hallway, and was asked to turn it over when a teacher observed him filing his fingernail with it. He turned the pen knife over as asked, explained that he discovered it in the hallway, and that he was going to turn it in. Nonetheless, he was expelled with no consideration of his record or background. The Pennsylvania Court made clear that this "zero tolerance" policy, even though not in writing, was nonetheless a school board policy that frustrated the legislative intent that the state's expulsion statute not be "blindly applied."

Students are bringing suits against school officials challenging procedural and substantive due process rights as a result of disciplinary actions taken by schools.

In other words, adopting a zero tolerance policy may actually be contrary to law when a state statutory scheme allows for discretion to be used in disciplinary matters. A school board's reluctance to use good judgment and sound reasoning in decisions concerning discipline may not only jeopardize an individual child's opportunity for education, but may also run afoul of a district's stated educational philosophy, as well as the state's legislative purposes behind the education of children.

Challenges By Students With Special Education Needs

Disciplinary actions taken against students with educational disabilities may pose additional liability for a school system if the mandates of the Individuals with Disabilities Education Act[37] (IDEA) are violated by overzealous administrators and/or school boards. The Act provides protections for students experiencing educational disabilities which adversely affect educational performance, and for which specially designed instruction is necessary. Included in these protections is the right to a due process hearing when violations of the IDEA are alleged which affect the child's right to a free and appropriate public education.[38]

A student identified under the IDEA as disabled must have an appropriate individualized educational plan (IEP), including positive behavioral interventions, strategies and supports to address the behaviors.[39] Changes in a child's educational placement, including expulsion or suspension for more than ten days, require a determination by the IEP team concerning the relationship between the child's disability and the behavior for which discipline is being imposed.[40] ***If the behavior of the child is sufficiently related to the child's disability, and an appropriate IEP and/or placement was not provided for the child, including behavior interventions where appropriate, the district may well be liable for failing to provide an appropriate education for the child.***[41]

A student may still be protected from disciplinary actions such as expulsion even if he has not yet been identified and provided an appropriate IEP, if it can be shown that the school had a basis of knowledge about the child's disability before the disciplinary action occurred.[42] ***In other words, a school district that does not properly identify a student as disabled and in need of services may still be held liable for improperly disciplining the student.***

.... (A) school district that does not properly identify a student as disabled and in need of services may still be held liable for improperly disciplining the student.

Parents may file written complaints with a state education agency concerning a school system's procedural violations of the IDEA,[43] or may request a due process hearing against the district on any issue concerning the identification, evaluation or educational services and placement of a child.[44] Due process hearings resulting from improper disciplinary actions taken against a child can be a costly and time consuming endeavor for a school district, including not only expenses in relation to their own attorneys, court reporters, and the hearing officer expenses, but also payment of a parent's attorney fees if the parent is successful in litigating the case.[45]

The 1997 amendments to the Individuals with Disabilities Education Act do not prohibit a school district from reporting a crime committed by a child with a disability to appropriate authorities, nor do they necessarily preclude a juvenile court from exercising authority over such cases.[46] A handful of state courts have determined that the juvenile court does not relinquish jurisdiction over a child who has been charged with a crime as a result of being a special education student.[47] However, zealous reporting of "crimes" by special education students, particularly if such conduct is related to their disability, may be an inappropriate and costly remedy for a school district which has failed to ensure that the child otherwise receives the protections of the IDEA. Increasing rates of suspension and expulsion may well make these challenges more frequent, as students turn to courts to protect their due process rights and continued access to educational services.

V. *Policy and Legislative Change: Focus on Suspensions and Expulsions*

"At the beginning of this school year, students on a bus were playfully throwing peanuts at one another. A peanut accidentally hit the white female bus driver, who immediately pulled over to call the police. After the police arrived, the bus was diverted to the courthouse, where the children were questioned. Five African-American males, ages 17 and 18, were then arrested for felony assault, which carries a maximum of five years in prison. The Sheriff commented to one newspaper, ***'[T]his time it was peanuts, but if we don't get a handle on it, the next time it could be bodies.'*** *The young men were also suspended from*

school and their bus privileges were withdrawn. After an attorney intervened on the students' behalf, the criminal charges were dropped, ***but all five young men, who were juniors and seniors, have since dropped out of school*** *due to a lack of transportation to travel the 30 miles to their school in this poor, rural county in the Mississippi, Delta. One of the young men told us, 'I [would have] gone to college.... Maybe I could have been a lawyer.'"*

-Sources: Statement by The Civil Rights Project at Harvard University. "Education Denied: The Negative Impact of Zero Tolerance Policies." Briefing for the U.S. Commission on Civil Rights, February 15, 2000

As we reported in July 1998, the climate of fear generated by school shootings has been used to justify a variety of policy and legislative changes, from the school house to the state house. Over the last two years, the media has profiled some dramatic examples of the use of expulsion, suspension, and sometimes, the prosecution of children for minor, sometimes non-criminal acts that occur on school grounds.

Examples of the broad use of these policies for petty acts abound:

- A seventeen-year-old junior shot a paper clip with a rubber band at a classmate, missed, and broke the skin of a cafeteria worker. The student was expelled from school.[48]

- A nine-year-old on the way to school found a manicure kit with a 1-inch knife. The student was suspended for one day.[49]

- A junior was expelled for bringing a can of pepper spray to school on a key chain.[50]

Recent events in Decatur, Illinois, where a number of African American youth were suspended for two years (subsequently reduced to six months) for fighting during a football game, have raised the specter that these policies are being pursued more aggressively. Both on the question of race, and sheer scale of kids' exclusions from schools, the highly publicized events in Decatur represent the tip of the iceberg of the problems created by the liberal use of suspension and expulsion.

Three million students were suspended in 1997, up from 1.7 million in 1974.

National Data

The Department of Education's Office of Civil Rights[51] collected data on suspension as part of its *Elementary and Secondary Schools Civil Rights Compliance Reports* ("E&S Survey"). The study collects a range of data

from one third of all public schools and school districts, and makes national projections based on those samples. While the full findings of the latest E&S survey will not be available until May 2000, the assistant secretary of Education for Civil Rights reported in their February estimates that:

- Suspensions have increased steadily for all students, rising from approximately 1.7 million (or 3.7%) of all students in 1974, to 3.1 million (or 6.84%) in 1997.

- There is a disparity in student suspension rates by race, specifically in regards to black male students. In 1997, black students constituted approximately 17% of students enrolled in public schools and approximately 32% of all students suspended.

- African Americans are suspended at roughly 2.3 times the rate of whites nationally.[52]

It appears that 5,724 students were expelled during school year 1996-97 under the federal "Gun Free Schools Act"-a bill that requires states to have legislation to mandate the expulsion of youths who bring guns to school. In the 1997-98 school year, the number dropped to 3,930.[53] The Director of the Safe and Drug Free Schools Program reports that 10% of the 3,930 expulsions were of elementary school students. While Justice Department officials were quick to credit swift enforcement of the law for the drop, the reduction may also be a function of the overall declining delinquency. Some authors have noted that weapons offenses represent a slim minority of the thousands of referrals for suspension in this country each year, and even though there are a large number of referrals for fighting, most are in response to minor incidents that do not affect school-wide safety.[54] While there is some national data to draw some conclusions from, state-by-state data give a better picture of what is likely happening across the country.

State Focus: Maryland-Suspensions And Expulsions[55]

The Maryland State Department of Education collects and disseminates suspension and expulsion data and serves to illustrate the nature and scale of the problem. According to data released in January 2000, 64,103 students were suspended in school year 1998-99, representing 7.8% of the entire K-12 student body (there were 113,064 individual acts of suspension and expulsion-some children being suspended more than once). *Almost 15,000 students were suspended or expelled from Maryland's elementary schools alone in 1998.* The rates of suspension vary in a surprising way from school district to school district: The two most urban districts in the state-places where we know from other research there is more likely to be a real school violence problem-do not have the highest

Baltimore's suspension rates were eclipsed by rural counties, where we know there is less school crime.

suspension and expulsion rates. For example, Baltimore City's rate of 9.9%, and Baltimore County's rate of 8.6% are eclipsed by the rural counties of Somerset (18.7%) and Dorchester (18.5%).

Over 60% of Maryland students' suspensions were for acts involving no violence.

As is reflected in the data from other states and cities, minority students are disproportionately expelled and suspended in Maryland. African Americans represent 36% of students in that state, but 54% (34,617) of the state's suspensions.[56] *African American youth were suspended at nearly two times the rate of white students.* African Americans also comprised more than half of the state's 1,300 expulsions in 1997-1998, *and were expelled at 2.2 times the rate of white students.*

Along with African American youth, special education students are overrepresented in the ranks of Maryland's suspended children. Despite making up 13% of the student body, children in special education make up almost a quarter (23.1%) of suspended kids, and a nearly a fifth (18.4%) of "long-term" suspensions. In 1998-99, these special needs youths represented 18.1% of all suspensions in Baltimore, and a quarter of those in Baltimore City. But in more rural or suburban districts (Frederick, Garrett, Allegany, and Charles County), special education students represented about a third, or more than a third, of all suspensions.

As national research has suggested, the largest number of suspensions were for acts involving no violence. Over 60% of Maryland student suspensions in 1998-1999 were for attendance violations, disrespect of authority, cheating, refusal to obey school regulations and other infractions (including vandalism, trespassing or theft). Thirty percent of the students were suspended for "fighting," threats and attacks, but over half of these were recorded as incidents of fighting (as opposed to the more serious charges of "physical attack" of students and teachers). The total percentage of Maryland students who were expelled or suspended did decline between school years 1997-1998 and 1998-1999 (from 9.1% to 7.8%), but the number of suspensions issued for non-violent acts increased from the previous year. Suspensions for physical attacks on students were down 13%, and firearm possession suspensions and expulsions were down 49.2%, but suspensions for false alarm/bomb threats were up 44.2%, and suspensions for cheating were up 28%.

State Focus: Massachusetts–Expulsions[57]

Massachusetts keeps a relatively comprehensive database on expulsions, and also demonstrates the nature and scope of the suspension and expulsion problem. The number of expulsions in that state have increased by 35% between school years 1993-94 (958) and 1996-7 (1,498). While 21.2% of the total students expelled that year were expelled for bringing a weapon to school, only 9% had a gun,

and 25% were listed as bringing a weapon "other" than a gun or knife to school. After weapons and carrying of illegal substances, youth in Massachusetts' schools were most often expelled for "other" (non-violent, unenumerated) offenses.

More than a third of Massachusetts students expelled in 1997-98 did not receive alternative education placements

As in Maryland, minority and disabled students in Massachusetts have borne the brunt of the state's expulsion policies: representing only one fifth of the student population, African Americans and Latino youth represent 54% of the state's expelled youth. One quarter of the children expelled in Massachusetts were previously enrolled in special education programs, even though they represent 15% of the state's school enrolment.

Like Maryland, Massachusetts' largest city, Boston, had one of the lowest expulsion rates (1.7 per 1000 students), and only the third highest total number of expulsions (109). By contrast, the town of Springfield had 399 expulsions with a rate of 16.8 per 1,000 students-nearly ten times the Boston rate. The city of Lawrence had 184 expulsions with a rate of 16.4 per 1,000. *In total, there were 16 other school districts with higher expulsion rates than Boston.* With suburban and smaller district expulsion rates outstripping the state's largest urban area, such rates clearly have little to do with overall juvenile crime rates, as was the case in Maryland.

Like some other states, Massachusetts does not require schools to provide expelled students with alternative education, either home schooling, or placement in an alternative school. Probably the most disturbing finding in the Massachusetts report is that 37% of youth expelled in 1997-98 did not receive alternative education in another school or special education program. In 75% of those cases, alternative education was not provided because the school district chose not to do so.

African American Students Are Punished At A Disproportionate Rate: Applied Research Center Data.[58]

The Applied Research Center (ARC), a national policy institute that focuses on issues of race, collected data from 10 city school districts across the country to study the disproportionate way suspension and exclusion policies are enforced. By recalculating ARC's data as suspension rates by racial categories, it becomes clear that African American children are most affected by the popularity of suspension and expulsion policies:

- In Phoenix, Arizona, the Union High School District suspends or expels African Americans students at an astonishing 22 times the rate of whites. African American student comprise just 4% of the student population (compared to 74% white), but actually make up more suspension

cases than whites (493 to 420).[97]

- In the Austin, Texas Independent School District, African American students were suspended or expelled at 4 times the rate of whites.
- In San Francisco, African American students were suspended or expelled at 3.7 times the rate of white students.
- In Denver, Colorado's School District, African American students were suspended at 3.2 times the rate of whites.

The other six cities investigated (Los Angeles, Chicago, Boston, Durham, Providence, Rhode Island, and Columbia, South Carolina) all suspended or expelled African American students at between 1.4 and 2.8 times the rate of whites. As the researchers at ARC point out, the majority of suspensions and expulsions are disproportionately dolled out to minority students for subjectively defined offenses (like "disrespect" and "defiance of authority" versus the objective "fighting" and the more serious "physical assault"). The authors of the study also note a powerful example of the different interpretations and definitions of "threat" that school administrators bring to the decision of how to discipline a student.

> *"When Martin, a young African American student at Providence's Mt. Pleasant High School, offered to help his teacher dislodge a stuck diskette from his computer, he whipped out his key chain knife and bent down to eyeball the recalcitrant disk. He fell afoul of Providence's 'zero-tolerance' rules, which mandates automatic suspension for any student who brings a "weapon" to school.*
>
> *"Would Martin have been suspended if he were white? Quite possibly. On the other hand, a white student in Danville, Vermont was neither suspended nor expelled when he explained that he'd brought a loaded shotgun to school because it was hunting season."*[98]

In Phoenix, Arizona, African American students were expelled or suspended at 22 times the rate of white students.

While minority students are bearing the brunt of zero tolerance policies, it is also worthwhile to note the sheer number of expulsions and suspensions in this sample of cities. In school year 1997-98, the cities of Los Angeles, Providence, Chicago and Austin expelled or suspended 43,439 students. In 1998-99, the cities of Phoenix, Durham, Boston, Denver, Columbus, South Carolina and San Francisco suspended or expelled 29,552. Again,

it appears that the difference in expulsion and suspension rates between cities has little to do with higher crime rates. The school districts of Salem-Keizer, Oregon, and Columbia, South Carolina suspend and expel kids at 5 and 6 times the rate of the cities of Chicago and San Francisco. ***These small towns may have a school crime problem, but it is unlikely that the crime differential is five times that of the third and fifth largest metropolitan areas in the U.S.*** Something other than school crime is playing a role in the decision to expel so many students.

The Risks Kids Face After Expulsion And Suspension

The three million children suspended or expelled in a given year may well represent a much larger problem than the threat posed by serious school violence. There is some research to suggest that these policies will have grave effects for a student's future education prospects and well-being.

Suspension Leads To Dropping Out

Consistently, research has pointed to a strong correlation between school suspension and dropping out of school.[61] One study published in the *Teachers College Record* found that sophomores who are suspended drop out at three times the rate of their peers.[62] This may be more than an accidental relationship, as ethnographic studies show that some school disciplinarians admit that they use expulsion and suspension as a tool to get certain "troublemakers" to leave.[63]

Despite the fact that some studies show that 95% of special education students who are suspended or expelled are not disciplined for violent behavior, they are disproportionately more likely to drop out of school as a result of suspensions and expulsions.[64] One survey shows that 28% of all special education students with discipline problems cite those problems as the reason for them dropping out of school.[65] Twenty-seven percent of all special education students who drop out have been absent 30 days or more in a school year. As such, when students with disabilities are suspended or expelled, their education becomes disrupted: they are more likely to fall further behind, to become more frustrated, and too frequently, to drop out of school.

A white student was neither suspended nor expelled when he explained that he'd brought a loaded shotgun to school—because it was hunting season.

Risk Factors For Youths Not In School

In 1994, the Centers for Disease Control and Prevention (CDC) reanalyzed data from the 1992 *Youth at Risk Behavior Survey* and came up with the differential rates of hazards kids face who were regularly attending schools as opposed to those who were not.[66] The CDC study found that youth who

were not in school were more likely to have been involved in a physical fight and more likely to carry a weapon (e.g., gun, knife, or club) during the 30 days preceding the survey. Out-of-school adolescents were more likely to smoke and use alcohol, marijuana and cocaine. Youths not in school are more likely to engage in sexual intercourse and less likely to wear seat belts or eat well.

Youths who were not in school were more likely to be in a physical fight and more likely to carry a weapon, more likely to smoke, drink, and use cocaine.
-Centers for Disease Control and Prevention

Referrals From The Classroom To The Courtroom

"Following Columbine, detectives from the Miami-Dade Police Department's Anti-Terrorism Squad called around to the various local high schools and inquired as to the names of and information about any of the students who might be dangerous. They also asked for a list of kids in the school who were "Gothic."-Stephen Harper, Public Defender, Miami, FL.[67]

In addition to missing valuable hours of learning, many of the children being excluded from schools are winding up directly in the juvenile justice system. In the post "school shooting" world, there is a growing reflex to bring in the justice system for matters that could be, and have previously been, handled in the principal's office.

In Port Huron, Michigan, police and school officials were quick to prosecute two youths as adults when they were overheard talking about committing a bigger massacre than in Columbine High School. Although police soon learned that the case was based, as other youths said, on "talk," prosecutors continued along with the proceedings for 8 months. The youths were eventually exonerated on conspiracy to commit second degree murder charges.[68] While the boys' behavior might have warranted serious punishment from school officials, it is unlikely that it, and many others like it, would have warranted prosecution prior to the highly publicized school shootings. Many cases currently being referred to the justice system by schools are not serious events:

- In Ponchatoula, Louisiana, a 12-year-old who had been diagnosed with a hyperactive disorder warned the kids in the lunch line not to eat all the potatoes, or "I'm going to get you." The student, turned in by the lunch monitor, was expelled for two days. He was then referred to police by the principal, and the police charged the boy with making "terroristic threats." He was incarcerated for two weeks while awaiting trial.[69]

- Two 10-year-old boys from Arlington, Virginia were suspended for three days for putting soapy water in a teacher's drink. At the teacher's urging, police charged the boys with a felony that carried a maximum sentence of 20 years. The children were formally processed through the juvenile justice system before the case was dismissed months later.[70]

- In Denton County, Texas, a 13-year-old was asked to write a "scary" Halloween story for a class assignment. When the child wrote a story that talked about shooting up a school, he received both a passing grade by his teacher and was referred to the school principal's office. The school officials called the police, and the child spent six days in jail before the courts confirmed that no crime had been committed.[71]

- In Palm Beach, Florida, a 14-year-old disabled student was referred to the principal's office for allegedly stealing $2 from another student. The principal referred the child to the police, where he was charged with strong-armed robbery, and held for six weeks in an adult jail for this, his first arrest. When the local media criticized the prosecutor's decision to file adult felony charges, he responded, "depicting this forcible felony, this strong-arm robbery, in terms as though it were no more than a $2 shoplifting fosters and promotes violence in our schools." Charges were dropped by the prosecution when a 60 Minutes II crew showed up at the boy's hearing.[72]

Because many such referrals to juvenile courts are still protected by confidentiality, and because there is limited data currently available, it is difficult to quantify them, although the potential of the problem is massive. A 1999 *Washington Post* opinion poll showed that about a third (32%) of students state that they heard someone threaten to kill someone in their school-the majority said they heard the threat more than once.[73] The defense bar is reporting that school officials have taken a more active role with prosecutors and law enforcement officials.[74] The practices being used in many jurisdictions seem to be raising the question as to who is willing to use good judgment and discretion in investigating and handing allegations about misconduct on the part of a student.

In Palm Beach, Florida, a 14-year-old disabled student was referred to the principal's office for allegedly stealing $2 from another student. He was charged with strong-armed robbery, and held for several weeks in an adult jail.

In Massachusetts, for examples, "roundtables" are convened by district attorneys, with school personnel, local police, and state social workers and probation officers meeting every 2-4 weeks. *These meetings are closed, not only to counsel representing students, but their parents.* The purpose of these "roundtables" is admittedly to identify and discuss violent and chronic juvenile offenders, and those otherwise "at risk" for delinquent behavior. According to the Suffolk County District Attorney's 1998 Annual Report,[75] the information shared at these meetings "results in more efficient prosecution of violent juveniles, a more coordinated response

among the agencies dealing with court involved juveniles, and the development of more coordinated intervention initiatives for at risk youth."[76] *But while the stated goal of the program is not prosecutorial in nature, the range of interventions are primarily court related,* including indictment for prosecution as a youthful offender, commitment to DYS, probation revocation, court imposed sanctions, and the filing of a Children In Need of Supervision petition. The only two non-judicial options are referral to a community based programs, or referrals to services at school.[77] Unfortunately, the interventions being used by the "roundtable" process often include a change in the child's school status, i.e. defined as "student no longer attends school (expelled, moved, long term suspension, etc.)" Some districts reported as many as 23% of the cases they handled resulted in a change in school status,[78] and that as many as 13% are expelled as a result of the case being completed.[79]

When a 12-year-old threatened, don't eat all the potatoes or "I'm going to get you," the boy was expelled, then incarcerated.

In the new post-Columbine legal environment, children are being punished by being removed from the classroom, sometimes based only on the mere allegations of misconduct in the community. In a civil rights case filed earlier this school year by the Children's Law Center, a school district finally agreed to allow a child back into school whose only "misconduct" was based on allegations concerning his conduct in the community and not at school.[80] Among the allegations in the complaint was that the district illegally obtained police reports about the child and used this information in making their decision to exclude the child from services.

In Pennsylvania, some juvenile courts have issued directives to school systems to immediately report students accused of criminal conduct for prosecution. The Court of Common Pleas of Delaware County, for example, distributed a blanket order to school districts requiring that:

> *"1. Where a particular school district receives a report from a student, teacher, and/or school official that a particular student has made a threat to commit a crime of violence as aforementioned, this matter shall immediately be referred to the local law enforcement agency; 2. Upon receipt of this information by the law enforcement agency, a Juvenile Petition shall be filed with the Juvenile Court forthwith and the Juvenile shall be detained."*[81]

Similarly, six months after a school shooting in Edinboro, Pennsylvania, a Juvenile Court Judge in Dauphin County, Pennsylvania, issued a Memorandum regarding "ZERO TOLERANCE" to School Violence, and noted that the Juvenile Court was therefore adopting a "Zero Tolerance" policy to

violence or threats of violence, of any kind, occurring in school. Under this policy, any student who commits or threatens to commit any act of violence is to be immediately prosecuted, with consequences being SERIOUS to SEVERE for the first offense, and CATASTROPHIC for subsequent offenses."[52] "There will be no second chances for this type of antisocial conduct " notes Judge Lawrence Clark, Jr., who issued the memorandum.

"Examined closely, 'zero tolerance' turns out to have very little to do with zero tolerance, and everything to do with one-size-fits all mandatory punishment," notes Bob Schwartz, Executive Director of the Juvenile Law Center in Philadelphia. "Indeed, few could quarrel with a policy of zero tolerance for children who misbehave...adults should react to misbehavior. Instead, however, zero tolerance has become mandatory sentencing for six-year-olds."[53]

While the goals of prevention and better coordination of services for high risk youth may well be laudable, the active involvement of school personnel in processes designed to make prosecution of students easier raises serious questions about the role of educators. At the very least, one might wonder what impact such involvement by school officials may have on the perception of students who might well view this alliance with growing skepticism.

Other Legislative And Policy Responses To School Violence Issues

Suspension, expulsion and school referrals to the criminal justice system as mechanisms to prevent future school shootings represent only one kind of policy response stemming from fears over school safety. While reactions on the national, state and local level have varied, a number of trends have become apparent. Some policies may enhance the learning experience, but others seem overly restrictive and more likely to turn our schools into appendages of the courts than cutting edge classrooms.

The defense bar is reporting that school officials have taken a more active role with prosecutors and law enforcement officials.

A look at legislative trends over the last five years begins with all states enacting legislation to comply with *The Gun-Free Schools Act of 1994*.[54] Since it was passed in 1994,[55] school districts that received federal money were required to adopt a gun-free policy and to expel students who carry a gun to school for one year with some allowances for discretion. The Act required not only that such policies exist within school districts, but that all gun incidents be reported by districts to their state education agencies, and that state and local laws regulating weapons in public schools be strengthened. Since 1997, however, legislation has shifted to increased penalties for school violence, relaxing confidentiality laws for juveniles to

permit additional disclosure of information, managing crises through law enforcement, security measures and crisis management plans, and increased emphasis on prevention programs and training for students and teachers.

Two-thirds of the states have eroded confidentiality provisions concerning children who commit an offense.

Legislative Initiatives: Increasing Penalties For School Violence

In addition to earlier legislation in response to *The Gun-Free Schools Act of 1994*, several states have recently attempted to strengthen their statutes to increase penalties for weapons, threats, or violence by students. Florida law, for example, now requires that each district adopt a policy of "zero tolerance" for student crime and substance abuse.[86] States such as North Carolina and Ohio have increased penalties for individuals making bomb threats, and in North Carolina, parents may be held civilly liable for children who make bomb threats.[87] Virginia, which has perhaps enacted some of the most stringent legislative penalties, has established a minimum incarceration period of two (2) days for students who assault a school employee, and six (6) months if a gun or other weapon prohibited on school property is used.[88]

Erosion Of Confidentiality Statutes

Roughly two-thirds of state legislatures have enacted some form of legislation since 1996 to erode confidentiality provisions concerning children who commit offenses, a protection which has long been at the heart of the juvenile court system in this country.[89] Required or permissible sharing of information concerning children accused of, or adjudicated of, committing an offense, has changed in nearly every state over the last five years.[90]

Several states now permit or require school districts to report all felonies or other violent acts against an employee or student to law enforcement officials,[91] or conversely, require that courts, police, and/or prosecutors notify school districts when a juvenile is suspected of, charged with, and/or found guilty of particular offenses.[92] Both Tennessee and Washington enacted legislation in 1999 requiring parents and guardians of students adjudicated as delinquent for a violent crime to notify the school system in writing of the nature of the offense when the student enrolls, changes schools, or returns to a school.[93] A student may be suspended, transferred or expelled if the parent has failed to provide the requested information about their child.[94]

Policy Responses: Crisis Prevention And Management Provisions

Several state legislatures have responded to the threat of school violence by enacting legislation to establish statewide school safety centers that provide funding for local grants to address violence

prevention."[95] Mandates to develop and modify curriculum for students to include conflict resolution, violence prevention measures, peer mediation and increased mental health services have also been common legislative responses, as well as being initiated by local and state school policy.[96] In more drastic measures, however, crisis drills, which consist of either lockdowns or evacuation, are becoming part of the new landscape of school safety.

> *"Teachers quickly flicked off lights, locked their classroom doors and herded students out of view. The students huddled in silence while police and school officials roamed the deserted hallways, peering into darkened classrooms, listening for noises, looking for any movement." . . . "It's important for kids and staff to guard themselves from what's in the hallway or outside the building. Any school that isn't preparing its students and staff for this possibility is being foolish." George Mason High School Principal Robert Snee, Falls Church.*[97]

Other schools throughout the country have, with the assistance of law enforcement teams, mapped school grounds and plotted responses to violent outbreaks, using students to act as "victims" playing out their roles. Schools from Berkeley, California to Versailles, Kentucky have conducted such drills, including the use of helicopters in Pittsburgh, Pennsylvania to evacuate the "wounded."[98] The use of such drills has triggered significant debate among advocates who believe that the lessons learned may save lives, and critics who believe that such drills are an overreaction and increase student worry about school violence.

Increased Law Enforcement And Security Measures

A response popular among state and local officials has been the increased use of law enforcement and other security measures by schools. One Chicago area high school rejected the idea of installing metal detectors as too intrusive, but spent $1 million dollars on video cameras.

Law enforcement teams are mapping school grounds, and plotting responses to violent outbreaks.

> *"Some people think we're doing this to spy on them, but you don't spend that kind of money without a very compelling reason. In the end, it's for safety." Administrator Kathy Miehls.–Newsweek, August 23, 1999*[99]

In Oregon, one Sheriff's department is dropping their D.A.R.E. program for elementary school students to focus more resources on preventing high school violence.

> *"In his new role as on-site officer, 'Landles . . . expects to be called on to break up occasional fights . . ., seize weapons discovered on campus and take reports of child abuse and other crimes the students may report. He'll also teach classes in constitutional rights and applied mathematics."*[100]

Schools throughout the nation have initiated programs requiring students to wear identification badges, or have had full time police officers assigned to their schools.

Student Profiling To Identify Students "On The Dark Side Of Life"

Trying to determine the characteristics of students who may be prone to violence has been the goal of some attempts to conduct "student profiling." The Federal Bureau of Investigation has been providing local law enforcement and school officials with access to programs to forecast future criminal behavior.[101] This program has been developed by the FBI to provide a list of behavior traits to help those closest to the students - their teachers and school leaders - identify children who might be at risk. To the FBI, tell-tail signs of trouble include having parental troubles, disliking popular students, experiencing a failed romance, and listening to songs with violent lyrics.

In a similar profiling program, *The Capital Times* in Springfield, Illinois reports that one school district's administrators are measuring students against a behavior checklist that includes use of abusive language, cruelty to animals, and writings reflecting an interest in "the dark side of life." Students who fit the profile can undergo counseling, be transferred to an alternative education program, or even be expelled.[102] And in keeping with technology, experts are beginning to develop and supply schools with computer programs with information to help officials determine the level of threat, if any, a student may pose. *The Dayton Daily News* in Ohio reported in September that one such system, developed by Gavin de Becker, may be used in at least twenty (20) schools nationally, and possibly in Ohio.[103]

"Any school that isn't preparing its students and staff for this possibility is being foolish."
-A Virginia Principal

It is hard to assess what role many of these policy and legislative changes will have on school shootings, considering that the threat is so small and idiosyncratic. As previously noted, crime data and students' perceptions indicate that policies which excessively heighten school security may actually make children less safe at school. At best, many of the "secure school" policies enumerated above may be ineffective crime reduction strategies. At worst, attempts to lock down the classroom may contribute to an unsafe learning environment.

Further attempts to water down student confidentiality may thwart the unique missions of the education and juvenile justice systems. It will become more difficult for the juvenile court to guarantee youth a second chance to make better choices if we legislate expulsion, suspension and mandate teachers to refer kids to the courts. The unintended consequences of curbing confidentiality requirements may serve to funnel more children away from the schools that must play a role in their avoidance of delinquency-a large price to pay when the statistical threat of school violence is declining.

One school district's administrators are measuring students against a behavior checklist that includes the use of abusive language, cruelty to animals, and interest in "the dark side of life."

VII. *Conclusions and Recommendations*

The data in this report remind Americans that school shootings are extremely rare, and that violence by youths inside and outside of America's schools is on the decline. Following the shooting by a six-year-old in a Mt. Morris Township school and one year after the tragedy at Columbine High School, these findings are clearly counterintuitive. As such, parents are increasingly fearful for their children's safety and school officials and legislators are responding to those fears by enacting new laws and policies that are turning our schools into more restrictive environments.

It is important for the news media-particularly television-to strive to present the true context of violent crime against children in a comprehensive fashion. It is equally important for school administrators and policy makers to craft solutions that respond to the real problems in our schools, and the much broader and larger problem of violence in America. By holding high school officials and media professionals to high standards, we expect the vast majority of Americans will take a more informed approach to provide quality learning environments for everyone's children.

Recommendation #1: Add More Context To Media Coverage

In the wake of the shootings in Littleton and Mt. Morris Township, there is some evidence that coverage of violence by youth was broader than usual. According to research that is to be published this spring by the Berkeley Media Studies Group, issues from gun control, to parenting, to violence on television, received more in-depth coverage than is normally the case.[104]

Still, the crime and public opinion data in this report indicate that Americans are not just misinformed, but are in many cases exponentially misinformed, by the hyperbole that too often follows school shootings. Americans don't know what they know about youth violence from personal experience, they know what they know about youth violence from the media. Most Americans

report they get most of their information about violence from television.[105] As it turns out, the media has been a very poor teacher.

With a one in two million chance of being killed in a school, 71% of Americans believe a shooting is likely in their school. With a 56% drop in youth homicides, almost two-thirds of Americans believe juvenile crime is on the increase.[106] And with a 40% decline in school associated violent deaths since last year, Americans were 49% more likely to believe that their schools were unsafe as compared to the previous year. It is clear that saturation coverage of school shootings from the first highly publicized shooting in Pearl, Mississippi, to the most recent tragedy in Mt. Morris Township, Michigan, has had a profound impact on the American psyche, rendering Americans more fearful of their kids and their schools than they ought to be.

It is, of course, preposterous to suggest that the media not cover shootings in America's schools. However, there are several areas in which the media can help create a more balanced view of America's schools and America's young people.

For one thing, the media needs to add more context to the coverage of school shootings and youth violence in general. We need our media professionals to remind viewers and readers that the school shootings they are covering are exceedingly rare, that they are not on the increase and that the current crime data shows violence by youths in and out of schools to be on the decline. Phrases like "another in a series of school shootings" and "an all-too-common phenomenon" should be dropped from the lexicon of evening newscasts. Further, the evidence presented in this report was and is readily available and needs to be disseminated to calm the inherently inflammatory impact of dramatic footage of school shootings.

It's important for the news media—particularly television—to strive to present the true context of violent crime against children in a comprehensive fashion.

Finally, efforts should be made to give less prominence to idiosyncratic crimes, even when they are clearly newsworthy. While no one is suggesting that such shootings be ignored, it is not mandatory that they make the front page or top of the evening news. Significantly, following the shooting in Springfield, Oregon, the *Chicago Sun-Times* editorialized that it would no longer cover out-of-state shootings on its front page out of a concern that such shootings were being blown out of proportion. *The New York Times* ran its coverage of the shooting in Mt. Morris Township on March 1st on page 14, giving equal weight and column inches to a study on racial disparities in school suspensions. KVUE in Austin, Texas[107] has decided that they will not cover crime stories on the evening news unless those stories meet one of five criteria:

1. Does action need to be taken?
2. Is there an immediate threat to safety?
3. Is there a threat to children?
4. Does the crime have significant community impact?
5. Does the story lend itself to a crime prevention effort?

Policy makers and school administrators in America simply cannot set rational public policy in an environment saturated in hyperbole. More balance must be struck between coverage of unusual and sensational stories and giving those stories excessive prominence and positioning which will lead to a sense of unwarranted panic.

Recommendation #2: Creating Safe School Environments With Promising Approaches

While policymakers and politicians are attempting to respond to parents' fears of school violence in a variety of ways, there is no "magic bullet" for school safety: No metal detectors, no surveillance system and no expulsion policy will ever guarantee against a school shooting or even a petty theft. Attempts by the FBI and others to "profile" potential school shooters, and S.W.A.T. team training for teachers will only turns schools into needlessly restrictive environments.

That having been said, there is some research pointing to the promising practice of creating an atmosphere of nonviolence in schools. As noted above, Mayer and Leone (1999) have found that schools which rely on metal detectors and locker searches to achieve student safety actually show higher rates of reported victimization than schools which create an atmosphere of safety through adherence to rules.

The latter is the approach taken by the Resolving Conflict Creatively Program (RCCP). According to a report by the Justice Department's National Institute of Justice:

Most Americans report they get most of their information about violence from television.

> *...RCCP is widely regarded by public health experts as one of the most promising violence prevention programs now in operation. What most distinguishes RCCP from other prevention programs is its focus on creating school change. This means that management of both individual classrooms and the school as a whole is consistent with a value system of nonviolence. And it means that students have a safe environment in which to explore peaceful ways of resolving conflict.*[108]

Another nonviolence school strategy, the Peacemakers Program, was administered to 1400 Cleveland Public School students in grades 4 through 8 in the 1997-1998 school year. In addition to a classroom-based, violence prevention instruction curriculum, Peacemakers, like RCCP, emphasizes infusing a violence-free ethic into the entire school culture. A rigorous evaluation of Peacemakers showed a 41% reduction in aggression-related disciplinary incidents and a 67% decrease in suspensions for violent behavior.[109]

These are just two promising approaches that can serve as alternatives to the "secure school" approach. Rather than dressing up schools as prisons with policies that are of dubious merit, educators should choose programs like these that enhance the school experience for everyone. Equipped with the facts about school violence, schools can respond to keep students safe without alienating them from adults.

Recommendation # 3: Regulate The Gun Industry

The nation cannot begin to address the statistically minute threat of serious gun violence against youth in schools until Americans can approach the much more common gun violence that consumes the lives of 7 to 8 kids each day. According to the Centers for Disease Control, the total number of deaths by firearms in America in 1997 was 32,436. Of those, 17,566 were suicides and 10,729 were homicides. About 3,000 youths are killed by gunfire every year in America, where 190 million firearms are in circulation, about 65 million of which are handguns.[110] The proliferation of handguns in America has created a toxic environment in which America's young people are 12 times more likely to be killed by gunfire than young people in 25 other industrialized societies.[111]

The nation needs to stop focusing exclusively on kids bringing guns to school, and address the more fundamental question of how kids got those guns in the first place. For real solutions to gun violence involving youth, we need to attend to the fact that the gun industry is the only industry specifically exempted from federal health and safety regulation. Today toy guns are more heavily regulated than real guns and children's vitamins are required to have safety caps on them while guns have no such safety requirements. The reality of firearm violence is that it results not from "guns in the wrong hands," but from the virtually unregulated distribution of an inherently dangerous consumer product of which specific categories-such as handguns and assault weapons-have very limited utility and inflict costs on society in the form of premature death and debilitating injury. The gun industry's deadly exemption from

Phrases like "another in a series of school shootings" and "an all-too-common phenomenon" should be dropped from the lexicon.

regulation must end if Americans are ever to see a meaningful decline in gun-related death and injury. *The Firearms Safety and Consumer Protection Act* (S. 534, H.R. 920) is the most comprehensive gun control proposal now pending in Congress. It would subject the gun industry to the same safety standards as virtually all other products sold in America, and finally end the gun industry's immunity from regulation. The recent agreement the federal government signed with handgun maker Smith & Wesson to install trigger locks and "smart gun" technology on all future handguns demonstrates that there may be some room for reform within the gun industry if governments pressure them to do so.

These recommendations only scratch the surface of the kinds of strategies which might be considered to address the continuing concerns over violence by and against young people, and the ability to provide high quality learning environments. The common theme through all of these ideas is that they address the root causes of Americans' concerns over education and safety, and not focus on highly publicized, but much rarer threats to the nation's children. ❧

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The Justice Policy Institute is a research and public policy organization in Washington, DC. The Children's Law Center is a non-profit legal service center in Kentucky dedicated to the protection of children's legal rights.

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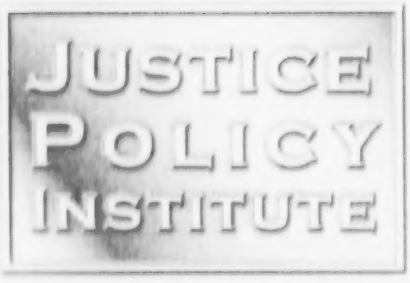

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